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COMPTROLLER GENERAL OF THE UNITED STATES
WASHINGTON, D.C. 20546

B-106516

August 20, 1964

Dear Mr. McCone:

Your letter of August 11, 1964, requests our decision whether because of section 501 of the Government Employees Salary Reform Act of 1964, subsequently approved on August 14, 1964, providing for increases in salary for certain employees (including classification act employees) to be effective as of the first day of the first pay period which begins on or after July 1, 1964, the similar increases authorized by directive of your agency may take effect on the same date.

In our decision of November 21, 1951, 31 Comp. Gen. 191, to the then Director of Central Intelligence we held, in effect, that since the salaries of employees of the agency are fixed pursuant to administrative authority without regard to the classification act, as amended, and regardless of the fact that compensation schedules had been adopted to correspond to classification act rates, there was no authority to grant retroactive increases to employees of the agency similar to those granted to classification act employees by the salary increase act of 1951, 65 Stat. 612, in the absence of express authority of law. That decision followed the long-established rule that administrative changes in salary rates may not be made retroactively without specific authority of law. 31 Comp. Gen. 163.

You indicate that the situation is different now than it was in 1951, primarily because of the issuance of a directive of the Acting Director on October 8, 1962, which provides as follows:

"1. This memorandum will serve to reaffirm the existing policy that the Agency * * * will adhere to the compensation schedules and other provisions of the Classification Act of 1949, as amended, and as it may be amended hereafter, for all staff personnel of the Agency * * *.

"2. Revision of the general compensation schedule, provisions for initial adjustment of salaries to such revised schedules, and other changes in the Classification Act will be given effect in the future by the Central Intelligence Agency whenever the law is amended. The effective date of such revisions and changes will be in accordance with the provisions of law making such changes."

D-106510

The above directive purports to grant and fix the effective date of increases in compensation for employees of your agency to coincide with the increases and effective date of classification act salary changes authorized by the 1964 salary act, that is, the beginning of the first pay period on and after July 1, 1964.

Since such directive was issued before July 1, 1964, we do not regard such prior action as contravening the rule against retroactive increases in compensation. The discretionary authority of the head of the agency was exercised at the time the directive was issued and nothing remained for him to do after the Government Employees Salary Reform Act of 1964 was enacted into law on August 14, 1964.

Accordingly, the salary increases to the employees of your agency covered by the directive of October 8, 1962, are held to be effective at the beginning of the first pay period on or after July 1, 1964.

We invite your attention, however, to the so-called Anti-Deficiency Act, 31 U.S.C. 665, since the increases in compensation are not considered as falling within the exception (31 U.S.C. 665(e)(1)(A)), which permits apportionment to show a deficiency, because the increases are not under a law which requires expenditures beyond administrative control.

Sincerely yours,

Joseph Campbell

Comptroller General
of the United States

The Honorable John A. McCone, Director
Central Intelligence Agency